

STAMP &amp; RETURN

Before the  
**Federal Communications Commission**  
 Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Marion and Johnston City, Illinois) )

MB Docket No. 03-13

RM-10628

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**OPPOSITION TO APPLICATION FOR REVIEW**

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), by its counsel, and pursuant to Section 1.115(d) of the Commission's Rules, hereby opposes the "Application for Review" filed by Infinity Broadcasting Operations, Inc., WGN Continental Broadcasting Company, and Bonneville International Corporation (together, "Joint Parties"). The Application for Review seeks Commission reversal of the *Report and Order* in the above-captioned proceeding. *See Report and Order*, 18 FCC Rcd 15346 (2003). For the reasons that follow, the Commission should deny the Application for Review.<sup>1</sup>

1. On July 24, 2003, the Commission (by authority delegated to the Media Bureau) granted Clear Channel's petition for rule making to relocate Station WHITE(FM) from Marion, Illinois to Johnston City, Illinois. On the same date, the Commission granted Clear Channel's application to relocate Station WHITE(AM) from Johnston City, Illinois to Berwyn, Illinois. Although following the grant of that application, Johnston City will retain local service from WDDD(AM), the licensee for WDDD must choose to operate only one of the two AM stations, five years after WHITE(AM) is licensed and on the air, because WHITE(AM) is WDDD's companion expanded band facility. Noting that the application would, in the absence of any other action, eventually result in the loss of Johnston City's sole local aural service, the

<sup>1</sup> The Joint Parties also filed an Application for Review of the Commission's grant of a related application, File No. BMAP-20010719AAN. Clear Channel is simultaneously filing a separate opposition to that Application for Review.

Commission treated the rule making proceeding as involving priority (3) of its FM allocation priorities (the provision of a first local service). *See Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982). Since a single local service at Johnston City is preferable to three local services at Marion, the Commission granted the petition. The Application for Review seeks reversal of that grant.

**I. The Application for Review Should Be Dismissed on Procedural Grounds.**

2. The Application for Review should be dismissed for failure to follow required procedural rules. First, the Joint Parties fail to “concisely and plainly” state the question for review, as required by Section 1.115(b)(1) of the Commission’s Rules. Second, the Joint Parties fail to state “with particularity” which of five enumerated factors warrant review as required by Section 1.115(b)(2) of the Commission’s Rules. The Application for Review itself contains nothing of substance whatsoever. It does incorporate by reference the Application for Review that the Joint Parties filed the same day in the WHITE application proceeding, but that pleading is similarly deficient. Accordingly, the Application for Review should be dismissed for failure to observe applicable pleading requirements. *See Chapman S. Root Revocable Trust*, 8 FCC Rcd 4223 (1993); *Arthur P. Baumgarden*, 11 FCC Rcd 4071 (1996).

**II. If the Application For Review is Not Dismissed, it Should be Denied on Substantive Grounds.**

3. To the extent substantive grounds for reversal can be discerned in the Application for Review, it fails on those grounds as well. The Joint Parties assert that the *Report and Order* did not give “reasoned consideration” to their arguments. App. for Review, Attachment, at 6. That assertion is hardly credible, given that the *Report and Order* contains at least 3 pages of reasoned analysis, all devoted to rebutting the Joint Parties’ arguments. The Joint Parties specifically take issue with the statement in the *Report and Order* that Section 73.3517 of the Commission’s Rules does not apply to an application that is contingent on a rule making proceeding, *see* App. for Review, Attachment, at 6, but even if they are correct, it would provide

no grounds for reversal of the *Report and Order*. The *Report and Order* concerned the grant of a petition for rule making, not an application, and Section 73.3517 obviously has no relevance in a rule making context.


4. The Joint Parties also evidently disagree with the Commission's decision to treat Johnston City as if it had no local service, *see* App. for Review, Attachment, at 8, but that decision was within the Commission's discretion and reasonable given that due to the Commission's simultaneous action, WDDD(AM), Johnston City's sole remaining service, may surrender its license. The Joint Parties are reduced to arguing, on the one hand, that grant of the WHITE application has deprived Johnston City of its only local service, and on the other hand, that Johnston City is not entitled to a first local service preference. These positions are irreconcilable.

### III. CONCLUSION

5. The *Report and Order* involved a routine application of the Commission's FM allocation priorities to arrive at a favorable arrangement of allotments. The Joint Parties advance no credible reason why it should be reversed. The Commission should deny the Application for Review and let the *Report and Order* stand.

Respectfully submitted,

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September 9, 2002

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, hereby certify that a copy of the foregoing "Opposition to Application for Review" was mailed, first class postage prepaid, this 9<sup>th</sup> day of September, 2003, to the following:

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